IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

(1) FIRST APPEAL NO. 741 OF 1989

1. The State of Maharashtra,
through the Land Acquisition ... Appellants
Officer, Metro Centre-II, Thane. (Org.Opponents)
Versus
1. Pandurang Jagu Patil. ... Respondents
2. Shantaram Jagu Patil & ors. (Org.Claimants)

(2) FIRST APPEAL NO. 743 OF 1989

1. The State of Maharashtra,
through the Land Acquisition ... Appellants
Officer, Metro Centre-II, Thane. (Org.Opponents)
Versus.
Vishnu Shivaji Patil
(since deceased through LRs.) .., Respondents
1. Gajanan Vishnu Patil and others. (Org.Claimants.)

(3) FIRST APPEAL NO. 746 OF 1989

1. The State of Maharashtra,
through the Land Acquisition ... Appellants
Officer, Metro Centre-II, Thane. (Org.Opponents)
Versus.
Dhondiram Bhau Mhatre. ... Respondent
(Org.Claimant.)

(4) FIRST APPEAL NO. 747 OF 1989

1. The State of Maharashtra,
through the Land Acquisition ... Appellants
Officer, Metro Centre-II, Thane. (Org.Opponents)
Versus.
Gajanan Sitaram Mhatre & others. ... Respondents
(Org.Claimants.)

(5) FIRST APPEAL NO. 748 OF 1989

1. The State of Maharashtra,
through the Land Acquisition Officer, Metro Centre-II, Thane. ... Appellants (Org.Opponents)

Versus.

Anant Laxman Patil. ... Respondent. (Org.Claimant.)

(6) FIRST APPEAL NO. 749 OF 1989

1. The State of Maharashtra,
through the Land Acquisition Officer, Metro Centre-II, Thane. ... Appellants (Org.Opponents)

Versus.

Chandrya alias Chandrarao Kalya Patil. ... Respondent (Org.Claimant.)

(7) FIRST APPEAL NO. 750 OF 1989

1. The State of Maharashtra,
through the Land Acquisition Officer, Metro Centre-II, Thane. ... Appellants (Org.Opponents)

Versus.

Narayan Maroji Madhavi. ... Respondent (Org.Claimant.)

(8) FIRST APPEAL NO. 751 OF 1989

The State of Maharashtra. ... Appellant (Org.Opponent.)

Versus.

Kashinath Laxman Veta and others. ... Respondents (Org.Claimants.)

(9) FIRST APPEAL NO. 752 OF 1989

The State of Maharashtra. ... Appellant (Org.Opponent.)

Versus.

Vishnu Mahadeo Mhatre and others. ... Respondents. (Org.Claimants)

(10) FIRST APPEAL NO. 753 OF 1989

The State of Maharashtra. ... Appellant (Org.Opponent.)

Versus.

Janardan Dinkar Mhatre & others. ... Respondents (Org.Claimants.)

(11) FIRST APPEAL NO. 754 OF 1989

The State of Maharashtra. ... Appellant (Org.Opponent.)

Versus.

Raghunath Hender Mhatre & others. ... Respondents. (Org.Claimants.)

(12) FIRST APPEAL NO. 755 OF 1989.

The State of Maharashtra. ... Appellant (Org.Opponent.)

Versus.

Baliram Vishu Patil
(since deceased through LRs.)
1A. Anant Baliram Patil and others. ... Respondents (Org.Claimants.)

Shri K.K.Tated, A.G.P. for the Appellants in all the Appeals.

Shri K.N.Kore with Shri M.N.Patil for the Respondents in all the Appeals.

CORAM : ABHAY S.OKA, J.

DATED : 3rd April, 2006.

ORAL JUDGMENT.

1. The submissions of the learned Advocates appearing for the parties were heard on the last date.

By these Appeals preferred by the State of Maharashtra, an exception has been taken to the judgments and awards made on 23rd September 1988 by the learned Joint District Judge, Thane, in References under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). It is not in dispute that these First Appeals arise out of the reference proceedings which were heard together and the main judgment dealing with all the aspect of the matters has been delivered in Land Acquisition Reference No.120 of 1986, which is the subject matter of challenge in the First Appeal No.741 of 1989. In case of all other reference proceedings, the learned trial Judge has delivered short judgments deciding the respective references in terms of the judgment delivered in Land Acquisition Reference No.120 of 1986. Therefore, for the sake of convenience, in this Judgment, a reference is made to the facts of the case in First Appeal No.741 of 1989.

2. The Appeals relate to the acquisition of various lands at village Koparkhairane, Taluka and District Thane. The acquisition of the lands is for the Project of development of a satellite city of Navi Mumbai. It is a wellknown fact that large number of lands from various villages in Thane Taluka in District Thane and Panvel Taluka in District Raigad were notified

for acquisition for the said public purpose by issuing notification under section 4 of the said Act on 3rd February 1970. After the awards were made in the year 1985 under section 11 of the said Act, the Respondents in these Appeals applied for reference under section 18 of the said Act. By the said Awards market value at the rates of Rs.1.50 to Rs.4.00 per sq.meter was awarded to different lands. The Reference Court came to the conclusion that the Respondents were entitled to market value at the rate of Rs.10/- per sq.meter.

3. Shri Tated, the learned A.G.P. appearing for the Appellants in these Appeals submitted that the market value fixed by the Reference Court is on a very higher side. He submitted that on the date of the notification under section 4 of the said Act, the acquired lands were agricultural lands and therefore, in view of the settled law some deduction will have to be made on account of the development charges. He pointed out that even assuming without admitting that the market value at the rate of Rs.10/- per sq.meter fixed by the Reference Court is correct, the Reference Court has committed an error by granting solatium under section 23(2) of the said Act even on the component of interest under section 23(1-A) of the said Act. He submitted that the solatium is payable only on the market value.

4. Shri Kore, the learned Advocate appearing for the Respondents, invited my attention to the Judgment and order dated 26th October 2005 passed by the learned Single Judge of this Court in First Appeal No.813 of 1993 and other connected Appeals. By the said Judgment and order, the learned Single Judge dismissed the Appeals preferred by the State Government for challenging the awards made under section 18 of the said Act in respect of the lands situated at village Koparkhairane which were notified for acquisition on the same date for the same purpose. The learned Single Judge observed that this Court in other matters has accepted the market value of the land at village Koparkhairane as on 3rd February 1970 to be Rs.10/- per sq.meter. He submitted that no interference is called for in so far as the market value is concerned. He submitted that in the other group of First Appeals decided on 26th October 1985, the learned Single Judge has not made any deduction on account of development charges and therefore, different view cannot be taken in these Appeals. He submitted that even the calculation made regarding the payment of solatium is not disturbed by the learned Single Judge. He pointed out that in the Awards which were made by the reference Court which were subject matter of the said group of Appeals, the

Reference Court had awarded solatium under section 23(2) on the market value as well as on interest under section 23(1-A) of the said Act. He, therefore, submitted that if interference is made by this Court, it will amount to passing an inconsistent order.

5. I have considered the submissions. It must be noted here that the Judgment and order dated 26th October 2001 shows that the contention regarding the deduction of development charges was not raised in the group of appeals before the learned Single Judge and therefore, there is no adjudication made on that aspect. Same is the case with the contention regarding the method adopted by the learned Reference Court for computing the solatium. The Judgment of the learned Single Judge in so far as the rate of market value is concerned is certainly relevant and has to be applied to the similarly situated lands. However, the other two aforesaid issues raised by the learned A.G.P. are not adjudicated upon by the learned Single Judge as the same did not arise before him and therefore, the said Judgment cannot be read as a binding precedent on the said two issues.

6. For deciding the submissions made by Shri Tated, the learned A.G.P. for State regarding the necessity of

deducting the development charges, a reference will have to be made to the evidence on record and the findings recorded by the learned Reference Court. The Claimants relied upon sale instances in the form of sale deed dated 18th November 1967 in respect of land bearing Gat No.226 at village Koparkhairane. The land was sold approximately at the rate of Rs.10/- per sq.meter. It must be noted here that in the present case, the relevant date for determination of market value is 3rd February 1970. The sale instance of the aforesaid sale deed is of a date which is more than 3 years earlier to the relevant date. The Respondents have examined one Namdeo Rama Patil, who is the Claimant in Land Acquisition Reference No.118 of 1986 which forms part of the same group along with the Land Acquisition Reference No.120 of 1986. He has deposed that the land of one Malinibai Joshi which is the subject matter of sale deed dated 18th September 1967 was adjacent to his land. He stated that his two other lands were acquired for the same public purpose for which Reference Court has awarded rate of Rs.10/- per sq.meter and no Appeal has been preferred against the said Award.

7. The deposition of Pandurang Jagu Patil, who is the witness No.1 for the Claimants, discloses that in the year 1964 the Government acquired all the lands

lying to the east of Thane-Belapur Road for the purpose of Industrial Estate of the Maharashtra Industrial Development Corporation (for short MIDC) and immediately thereafter industries started coming up in the area acquired by the MIDC. He stated that the lands from the village Koparkhairane which are situated at both sides of the said Road were acquired. The lands on the eastern side of Belapur Road were acquired for the purpose of MIDC and the lands on the western side were acquired for the purpose of New Bombay Project. He has also stated that the land of Malinibai Joshi which is the subject matter of sale deed dated 18th September 1967 was situated in the same village. In fact he has stated that the land was having rocky soil and was situated by the side of a hillock.

8. The Award of the trial Court is based on the said sale instance of sale deed dated 18th November 1967. The sale had taken about 3 years prior to the relevant date in the present matter. It is stated by the witness Pandurang that from 1964 to the year 1970 number of Industries were set up in the Thane Belapur belt in which the village Koparkhairne is located. He stated that in the year 1964 about 50 to 60 industries were set up in village Koparkhairne including Chemical and Fibre Industries of India Ltd., Standard Alkalies

Ltd., United Carbon etc. The Apex Court has held that in a situation like this the Court can always take judicial notice of the fact that there is a steady increase in the market value of the immoveable properties. The said view is taken by the Apex Court in a decision in the case of Land Acquisition Officer v/s. L.Kamalamma and others, reported in (1998) 2 S.C.C. page 385. The sale instance in the form of Sale Deed dated 18th October 1967 discloses that an agricultural land from the same village was sold at the rate of Rs.10/- per sq.meter. In view of evidence of witnesses Pandurang and Namdeo it can be safely said that the land which is subject matter of the sale deed is comparable with the acquired lands in these Appeals. A judicial notice can be taken of a reasonable increase in market value from the year 1968 till 3rd February 1970 which is the date in these cases. Therefore, it can be safely said that market value of the acquired lands on the relevant date of section 4 notification was more than Rs.10/- per sq.meter. As pointed out by the learned Advocate appearing for the Respondents, this Court has confirmed the rate of Rs.10/- per sq.meter without making any deduction on account of development charges. Taking into consideration the fact that the evidence on record discloses that the market value of the lands subject matter of these Appeals was more than Rs.10/-

per sq.meter on the relevant date and as the Reference Court has awarded only Rs.10/- per sq.meters, there is no need to make deduction on account of the development charges in view of the peculiar facts of the case. Hence so far as the market value is concerned, no interference is required.

10. A perusal of the paragraph 20 of the Judgment in Land Acquisition Reference No.120 of 1986 shows that the market value calculated at the rate of Rs.10/- per sq.meter is Rs.95,850/-. However, solatium at the rate of 30% of market value payable in accordance with section 23(2) of the said Act is calculated at Rs.83,245.72 ps. which comes to nearly about 85% of the market value. The reason appears to be that while computing solatium, the learned Reference Court has calculated the same not only on the market value, but also on the component of interest under section 23(1-A) of the said Act.

11. The law on this aspect is very clear as is reflected from the decision of the Apex Court in the case of State of Punjab and others v/s. Mohinder Singh Randhawa and another, reported in 1993 Supp.(1) S.C.C. page 49. Paragraphs Nos.2, 5, 6 and 7 of the said decision read as under:

"2. Three contentions were canvassed at the hearing: (1) the payments stipulated under Section 23(1-A) of the Land Acquisition Act is not admissible; **(2) solatium at enhanced rate of 30 per cent cannot be calculated by taking into account the sum of money covered by Section 23(1-A) of the Act;** and (3) interest payable under section 34 of the Act cannot take into account the interest component payable under the Act.

5. Section 23(1-A) provides:

. "23.(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value...."

6. Sub-section(2) of section 23 mandates:

. "23. (2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition."

7. **Reading the two provisions together, it follows that the amount referred to in Section 23(1-A) is not a part of the market value and, therefore, calculation of solatium would not take into account that amount."** (Emphasis supplied)

Thus to that extent the Reference Court appears to have committed an error by granting solatium even on component of section 23(1-A). It is not in dispute in this case that the Claimants are entitled to the interest under section 23(1-A), solatium under section 23(2) and interest under section 28 of the said Act as amended by Amendment Act No.68 of 1984. Thus on the market value fixed under section 23(1), the Claimants will be entitled to interest under section 23(1A). The Claimants are also entitled to solatium under section 23(2) of the said Act on the market value fixed under section 23(1). The Claimants will also be entitled to interest under section 28 of the said Act on all the three components, viz. component of market value, interest under section 23(1-A), and solatium under section 23(2) of the said Act.

12. Hence the Appeals are partly allowed and the impugned Judgments and Awards deserve to be modified

partly. Hence the following order is passed:

i) The Appeals are partly allowed.

ii) The market rate of Rs.10/- per sq.meter fixed by the Reference Court is confirmed.

iii) However, the Reference Court is directed to calculate the compensation payable to the Claimants in the light of the observations made by this Court in paragraph 11 above and will draw fresh awards accordingly. This exercise shall be completed within the period of four months from the date of receipt of writ of this order.

iv) Except for calculation of compensation, rest of the Judgment and Award is confirmed.

v) The Respondents (original Claimants) will be entitled to proportionate costs throughout including costs of this Appeal.

vi) Certified copy is expedited.

Judge.